

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BLAINE ELLIOTT WALLACE

Claimant

VS.

ADVANCED MFG. TECHNOLOGIES, INC.

Respondent

AND

REPUBLIC INDEM. CO. OF AMERICA

Insurance Carrier

Docket No. 1,000,825

ORDER

Claimant requested review of the February 2, 2004 Award by Administrative Law Judge Jon L. Frobish. The Board heard oral argument on August 17, 2004.

APPEARANCES

Tom E. Hammond of Wichita, Kansas, appeared for the claimant. Douglas C. Hobbs of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

It was agreed the claimant suffered a specific traumatic injury to his right wrist on April 1, 2001. Claimant further alleged repetitive bilateral injuries to both hands and arms through his last day worked on November 14, 2001. As a result of bilateral injuries to parallel upper extremities claimant argued he was entitled to compensation for a whole body functional impairment. Conversely, respondent argued claimant only suffered permanent impairment to his right wrist and denied claimant suffered work-related repetitive injury to his left upper extremity. The Administrative Law Judge (ALJ) limited claimant's award to a 2 percent permanent partial scheduled disability to the right forearm.

The claimant requests review of the nature and extent of disability and argues that he has sustained his burden of proof that he suffered work-related injuries to both upper extremities and is entitled to a 12 percent permanent partial whole body functional impairment.

Respondent argues the claimant has only suffered a scheduled injury to his right forearm and requests the Board to affirm the ALJ's Award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

In 1984 the claimant began working for the respondent as a machinist. Eventually claimant became the shop supervisor for manufacturing. Claimant supervised the shipping and receiving, maintenance and other machinists. Claimant's job duties as a working supervisor included starting all of the machines early in the morning and then he divided his time between supervisory duties and running machines. Claimant would run machines an average of four hours a day.

In order to run the machines claimant noted the job involved lifting, bending, squatting, climbing, the operation of hand and air tools as well as the ability to read micrometers and calipers. Claimant used hand tools such as air and impact wrenches as well as vices.

On April 1, 2001, claimant injured his right wrist when he struck a vice handle with his hand in order to loosen the vice. The vice handle froze and didn't move when claimant hit it. Claimant immediately experienced pain in his wrist. At his discovery deposition, the claimant testified he advised the owners about the vice seizing up but did not tell them about injuring his wrist. At regular hearing, claimant testified he told his supervisor and was given ice for his wrist and because that helped with the swelling he continued working.

Claimant's last day worked, due to an economic layoff, was November 14, 2001. He first sought medical treatment on November 29, 2001. Between April 2001 and November 2001 the claimant's right wrist pain would wax and wane depending upon the level of activity and he did not seek any medical treatment from the respondent. Claimant also noted that his left wrist also bothered him but the right wrist was more painful.

When claimant reported his wrist complaints he was referred to Dr. Daryl Thomas, the company physician. Dr. Thomas prescribed splints for both arms and anti-inflammatory medication. Claimant saw the company physician on three occasions and that is all the treatment he received. And it is noteworthy that claimant's primary complaints focused

upon his right wrist. Claimant was later referred for treatment with Dr. Philip R. Mills but it was determined he was at maximum medical improvement and rated.

Claimant testified he is still experiencing numbness in his hands when he rides his bike as well as using vibratory tools. The pain is more severe in the right wrist than in the left wrist. Claimant testified that activities which require a jig-saw or hammer bothers his hands. Claimant has used a shotgun for dove hunting but has pain.

At his attorney's request, the claimant was examined on April 3, 2003, by Dr. Michael H. Munhall, a board certified physician in physical medicine and rehabilitation. Dr. Munhall's examination revealed positive Tinel's sign bilaterally at the elbows and wrists. Dr. Munhall testified this finding was indicative of either nerve irritation or possible nerve entrapment. Dr. Munhall diagnosed the claimant with cumulative trauma disorder, bilateral upper extremities. Dr. Munhall rated the claimant's right wrist pain and carpal tunnel syndrome for a 10 percent right upper extremity impairment which converts to a 6 percent whole person impairment. Claimant's right ulnar nerve irritation is rated at 3 percent to the right upper extremity which converts to a 2 percent whole person impairment. Claimant's right wrist pain and derangement syndrome is rated at 3 percent right upper extremity which equates to a 2 percent whole person impairment. The left ulnar nerve irritation of the elbow is rated at 3 percent to the left upper extremity which converts to a 2 percent whole person impairment. Using the Combined Values Chart, the claimant has a 12 percent whole person impairment.

On cross-examination, Dr. Munhall further opined the claimant had nerve irritation rather than an entrapment. Dr. Munhall testified there is a causal connection between claimant's diagnosis and the work-related injuries. The doctor later reviewed the results of the nerve conduction tests performed by Dr. Mills and concluded the testing revealed very early changes in the median nerve at both the left and right wrists. Dr. Munhall concluded those results, in conjunction with the clinical examination, suggested more of a nerve irritation rather than entrapment. As a result after reviewing the nerve conduction study, Dr. Munhall reduced his whole person impairment to 7 percent. This was because he reduced his 10 percent impairment to the right upper extremity to a 3 percent.

Dr. Munhall noted that claimant had a negative Phalen's test of both wrists. Dr. Munhall did not diagnose claimant with carpal tunnel of the left wrist but instead diagnosed left ulnar nerve irritation of the left elbow. And Dr. Munhall conceded the AMA *Guides*¹ do not contain a specific 3 percent rating for nerve irritation to the upper extremity.

At the insurance carrier's request, the claimant was examined by Dr. Philip R. Mills on December 13, 2001. Claimant complained of bilateral wrist pain but primarily had right

¹ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

wrist pain. Phalen's testing was negative bilaterally. Dr. Mills diagnosed the claimant with status post right wrist tendonitis. The doctor opined claimant had a 2 percent permanent partial impairment to the right upper extremity. Although Dr. Mills noted that no restrictions were necessary, he later testified that he would agree that Dr. Stein's bilateral restrictions were reasonable.

Dr. Mills saw the claimant a second time on May 6, 2003, to perform an electrodiagnostic study. Dr. Mills concluded the claimant did not have bilateral carpal tunnel syndrome based on the results of the electrodiagnostic studies. Dr. Mills testified:

Q. There's been some testimony in this case that this gentleman may have bilateral carpal tunnel syndrome. Did you find this gentleman to have bilateral carpal tunnel syndrome?

A. I did not.

Q. Why not?

A. He had - - I did do electroneurodiagnostic studies, and - - to rule out carpal tunnel syndrome. I did a full study, and these were normal and symmetrical. They were not suggestive of carpal tunnel syndrome or ulnar neuropathy. And so I believe he does not have carpal tunnel or ulnar neuropathy, at least at the time that I did this study.²

At his attorney's request, the claimant was examined by Dr. Pedro A. Murati on October 31, 2002. The claimant's chief complaints were in the right hand and wrist and in Dr. Murati's report there is only a note of occasional pain in the left hand. Dr. Murati diagnosed the claimant with bilateral carpal tunnel syndrome and provided a 10 percent to each upper extremity impairment which converts to a 6 percent whole person impairment for each extremity. Using the Combined Values Chart, the two 6 percent upper extremity impairments convert to a 12 percent whole person impairment.

Dr. Murati further testified that the EMG study performed by Dr. Mills confirmed his diagnosis. The doctor noted there was a greater than point 4 difference between the right thumb and median thumb readings. The doctor also placed permanent restrictions on the claimant of no grasping, no lifting or carrying, no pushing or pulling greater than 35 pounds as well as no use of hooks, knives or vibratory tools. Dr. Murati also recommended the claimant use wrist splints while working.

At the ALJ's request, claimant was seen by Dr. Paul S. Stein on February 11, 2003, for an independent medical examination and rating. Dr. Stein noted claimant indicated that his right wrist and hand provide the most trouble. Claimant complained of some tingling

² Mills Depo. at 9.

in the left wrist. Dr. Stein noted the Phalen's carpal tunnel test was positive on the right and negative on the left. The doctor opined that he could not provide an accurate impairment rating without bilateral nerve conduction testing. If the testing was negative, then Dr. Mills' diagnosis of tendonitis is appropriate and claimant should be rated accordingly. Dr. Stein concluded it would be in claimant's best interest to avoid repetitive activity with both hands as well as the use of torquing hand tools and vibratory power tools.

In an IME follow-up report dated August 15, 2003, Dr. Stein received the report of the testing Dr. Mills had conducted on the claimant. Because the study was normal, Dr. Stein concluded the 2 percent rating to the right upper extremity was appropriate and he further offered no impairment rating to the left upper extremity.

Initially, it must be determined whether claimant suffered scheduled or non-scheduled injuries as a result of his work-related accident on April 1, 2001, and his work activities afterwards. The Act recognizes two different classes of injuries which do not result in death or total disability. An injured employee may suffer a permanent disability to a scheduled body part or a permanent partial general disability.³ It is the situs of the disability, not the situs of the trauma, that determines which benefits are available.⁴

Accordingly, if claimant's permanent disability is limited to his right upper extremity his compensation is limited to a scheduled disability. If claimant's permanent disability includes both parallel upper extremities his compensation could be for a permanent partial general disability.⁵

Dr. Mills diagnosed tendonitis of the right wrist. Dr. Stein agreed claimant had tendonitis in the right wrist but concluded diagnostic testing was required to either confirm or refute whether claimant had carpal tunnel syndrome. Dr. Mills performed such testing and concluded it was negative bilaterally for carpal tunnel. Although Dr. Munhall had initially diagnosed claimant with right carpal tunnel, after reviewing Dr. Mills' test results he then concluded claimant only suffered from right wrist nerve irritation and reduced his impairment rating as a result. Dr. Murati concluded claimant suffered from bilateral carpal tunnel syndrome and concluded there were abnormal findings in Dr. Mills' test results which confirmed his diagnosis.

Neither Dr. Mills nor Dr. Stein diagnosed any permanent ratable condition in claimant's left upper extremity. And although Dr. Munhall diagnosed ulnar nerve irritation in claimant's left elbow he admitted that irritation is not a ratable permanent condition under

³ K.S.A. 44-510d (Furse 2000); K.S.A. 44-510e (Furse 2000).

⁴ *Bryant v. Excel Corp.*, 239 Kan. 688, 722 P.2d 579 (1986).

⁵ *Pruter v. Larned State Hospital*, 271 Kan. 865, 26 P.3d 666 (2001).

the AMA *Guides*. Dr. Murati concluded claimant suffered from carpal tunnel syndrome on the left.

The results of the nerve conduction studies performed by Dr. Mills were read as negative for carpal tunnel syndrome by Dr. Mills. Dr. Stein had noted in his report that if testing was negative he would adopt Dr. Mills earlier findings with regard to diagnosis and rating. When Dr. Munhall reviewed the test results he concluded that although there were abnormal findings, nonetheless, there was no indication of nerve entrapment and he revised his initial diagnosis of right carpal tunnel syndrome. Only Dr. Murati persisted in his diagnosis of bilateral carpal tunnel syndrome.

Due to the absence of classical clinical signs of nerve entrapment and the electrodiagnostic studies which were interpreted as not indicating nerve entrapment, the ALJ concluded the claimant had failed to meet his burden of proof of any permanent injury other than to his right wrist. The Board agrees and affirms.

AWARD

WHEREFORE, it is the finding of the Board that the Award of Administrative Law Judge Jon L. Frobish dated February 2, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Tom E. Hammond, Attorney for Claimant
Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier
Vacant, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director